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OFFICE OF PETITIONS

In re :
Randall, et al. : DECISION ON APPLICATION
Application No. 09/685,296 : FOR PATENT TERM ADJUSTMENT
Filed: October 10, 2000 : AND
Patent No. 6,773,917 : NOTICE OF INTENT TO ISSUE
Issued: August 10, 2004 : CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR 1.705", filed August 10, 2003. Applicants request that the patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred sixteen (116) to two hundred fourteen (214) days.

The application for patent term adjustment is **GRANTED**.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **two hundred fourteen (214) days**.

On October 2, 2003, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date was sixty-four (64) days. On August 10, 2004, the above-identified application matured into U.S. Patent No. 6,773,917. The patent issued with a Patent Term Adjustment of one hundred sixteen (116) days.

Applicants state that the patent is not subject to a terminal disclaimer.

The Office determined a patent term adjustment of one hundred sixteen (116) days based on an adjustment for PTO delay of one hundred thirty-three (133) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), one hundred fourteen (114) days pursuant to 35 U.S.C. 154(b)(1)(A)(iv) and 37 C.F.R. §1.703(a)(6), and fifty-eight (58) days pursuant to 35 U.S.C. 154(b)(1)(B)(iii) and 37 C.F.R. §1.703(b), reduced by applicants' delays of sixty-nine (69) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b), and one hundred twenty (120) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(c)(10). The PTO delays of 133, 114, and 58 days, and applicant delay of 69 days, have been reviewed and found to be correct. The adjustments of 120 days is at issue.

The adjustment of 120 days for the filing of a "LETTER REGARDING ERROR IN PATENT TERM ADJUSTMENT" has been found to be incorrect. Pursuant to 37 C.F.R. §1.704(e), the submission of an application for patent term adjustment is not considered a failure to engage in reasonable efforts to conclude prosecution of the application. Accordingly, Applicants should have incurred no delay for this filing.

However, Applicants were not assessed delay for the amendment filed September 11, 2003. A final Office action was mailed on May 20, 2003. Pursuant to 37 C.F.R. §1.704(b), twenty-two (22) days of applicant delay should have been assessed.

In view thereof, issuance of a certificate of correction pursuant to 35 U.S.C. §254 and 37 C.F.R. §1.322 is appropriate.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. §254 and 37 C.F.R. §1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **two hundred fourteen (214) days** subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571) 272-3207.

*Karen Ferriter
for*

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Draft Certificate of Correction